IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA MISSOULA DIVISION



ROLAND TIREY,

CV 16-25-M-DLC-JCL

Petitioner,

ORDER

VS.

LEROY KIRKEGARD, et al.,

Respondents.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on March 23, 2016, recommending dismissal of Petitioner Roland Tirey's ("Tirey") application for writ of habeas corpus under 28 U.S.C. § 2254. Tirey timely filed objections and is therefore entitled to de novo review of those Findings and Recommendations to which he specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). "Clear error exists if the Court is left with a definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Upon review of the objections, the Court finds that Tirey fails to object to the legal reasoning applied in the Findings and Recommendations. Instead, Tirey's "objections" attempt to offer additional arguments supporting his claim that the Montana Supreme Court erred by not granting his petition for writ of habeas corpus. However, these arguments fail to undercut Judge Lynch's primary finding that Tirey's federal habeas petition is time-barred without excuse and must be dismissed. Tirey does impliedly suggest that his untimely petition should be excused because he was not "educated in a school of law" and did "not understand the rules of the federal court." (Doc. 9 at 4.) This argument, however, does not excuse an untimely habeas petition. *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) ("[P]ro se petitioner's lack of legal sophistication is not, by itself, an extraordinary circumstance warranting equitable tolling.").

Accordingly, the Court reviews the remainder Judge Lynch's Findings and Recommendations for clear error and, finding none,

IT IS ORDERED that:

- (1) Judge Lynch's Findings and Recommendations (Doc. 6) are ADOPTED IN FULL.
- (2) Tirey's Petition (Doc. 1) is DISMISSED WITH PREJUDICE as time-barred without excuse.

- (3) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.
 - (4) A certificate of appealability is DENIED

DATED this 31 st day of May, 2016

Dana L. Christensen, Chief Judge

United States District Court